

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	Administrative Cause
)	Number: 14-003L
READOPTION OF 312 IAC 5:)	
BOATING ON PUBLIC WATERS)	
OF INDIANA)	(LSA Document #14-67(F))

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration, is the readoption of 312 IAC 5 which governs the use of a boat on public waters of Indiana. 312 IAC 5 can be accessed through the Indiana General Assembly's website at: <http://www.in.gov/legislative/iac/T03120/A00050.PDF>.

312 IAC 5 is proposed to be readopted in its entirety and without amendment. Under 312 IAC 2-2-4(b) if rules are being readopted in their current form without amendments, the Director of the Division of Hearings may approve preliminary action. The Commission retained authority to take final action on readoptions.

The Director of the Division of Hearings approved preliminary action on February 26, 2014. The standard practice is to readopt rules by article, and 312 IAC 5 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5

Lt. Kenton Turner, Conservation Officer with the DNR's Division of Law Enforcement, was appointed Small Business Regulatory Coordinator for the rule readoption. He provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 5:

Review under IC 4-22-2.5-3.1

**SMALL BUSINESS IMPACT STATEMENT (EIS)
LSA Document #14-67**

The continued need for the rule.

312 IAC 5 governs the use of any boat on Indiana's public waters.

312 IAC 5-1 establishes the Law Enforcement Division Director or his delegate makes the initial determination for any license issued under this article. It further establishes the natural Resources Commission (the "NRC") as the ultimate reviewing authority for the Department of Natural Resources (the "DNR").

312 IAC 5-2 provides definitions with applicability to 312 IAC 5, in addition to those definitions found at 312 IAC 1.

312 IAC 5-3 governs the conduct of any boat race, water ski event, and major boating activity and provides a license for such events. The rule also establishes factors that are to be considered before license approval, and provides public notice criteria requirements for the license applicant.

312 IAC 5-4 governs the criteria for lawful placement of navigation aids or water recreation structures. This rule establishes that a navigational aid must be a buoy and establishes that notwithstanding 312 IAC 6 and 312 IAC 11 that a license is required for the placement of a navigational aid or water recreation structure and creates a penalty for tampering with a navigation aid. The rule provides mandates that the geometric shapes, colors, and marks on buoys must conform to standards established by 33 CFR 62.25 through 33 CFR 62.31.

312 IAC 5-5 governs the disposal or discharge of sewage, gray-water, and other wastes from a boat that is located on public water. The rule defines "waste" and "marine sanitation device" and describes lawful use of such device.

312 IAC 5-6 establishes zones on specific freshwater lakes to address a variety of concerns and issues. The rule creates a speed limit for boats on certain lakes as well as idle zones. Additionally, the rule provides temporary structure standards for Bass Lake and establishes zones (commonly called "ecozones") for management of fish, wildlife, and botanical resources at specific locations on certain lakes. The rule specifies these ecozones by marked with buoys placed under 312 IAC 5-4.

312 IAC 5-7 establishes zones on navigable waterways, other than Lake Michigan, to govern the operation of boats. The rule establishes speed limits including idle zones at specific locations on certain navigable waterways to include some Ohio River embayments and tributaries.

312 IAC 5-8 establishes zones on Lake Michigan and its tributaries in Lake, Porter, and LaPorte Counties to govern the operation of boats. The rule creates zones on portions of Lake Michigan and idle zones in certain areas. The rule specifies these special zones be marked with buoys placed under 312 IAC 5-4.

312 IAC 5-9 establishes zones on specified waters owned or controlled by public utilities to govern the operation of boats. This rule establishes idle zones and creates areas restricting boats from specific areas. The specified waters governed by this rule include Geist Reservoir, Morse Reservoir, Prairie Creek Reservoir and Sullivan Lake. This rule specifies these special zones be marked with buoys placed under 312 IAC 5-4.

312 IAC 5-10 establishes special boating zones on lakes and reservoirs financed either wholly or in part with state or federal funds. This rule establishes idle zones and areas restricted to boats in certain lakes in this section. This rule further creates waterfowl resting areas and restricts the operation of boats within these areas during certain times of the year on Monroe and Patoka Reservoirs. This rule specifies these special zones and areas to be marked with buoys placed under 312 IAC 5-4.

312 IAC 5-11 exempts specified small lakes (as defined by IC14-15-3-1) that contain more than seventy (70) acres from the prohibition under IC 14-15-3-10 against the operation of a motorboat at a rate of speed greater than ten (10) miles per hour. This rule establishes certain times on certain days when the prohibition on speed may be exempted.

312 IAC 5-12 controls and sets guidelines for the issuance of a temporary order to modify, restrict or close any public waters of this state to boat operations by the Department of Natural Resources Director. The rule specifies what type modifications might be implemented to boat operations if unusual or hazardous conditions exist on public waters. Non-Rule policy Information Bulletin #51 was created for use in conjunction with this rule. The non-rule policy has some criteria to be considered prior to implementation of this rule.

312 IAC 5-12.5 pertains to excise tax decals that are required under IC 6-6-11-24(2). The rule gives authority for the taxpayer to display decals on the boom of a sailboat if the decals would not be visible on the bow while underway.

312 IAC 5-13 varies the equipment and operational standards specified in IC 14-15 for waters of concurrent jurisdiction. This rule set standards for certain equipment requirements, such as fire extinguishers and sound signaling devices. The rule also sets operational standards for the mandatory PFD wear for children under the age of 13, and water skiing requirements on these type waters.

312 IAC 5-14 governs the inspection, maintenance and operation of boats carrying passengers for hire upon public waters. This rule establishes ongoing inspections protocols and standards for all boats operating on public waters that are carrying passengers for hire with the exception of vessels that are regulated and inspected by the United States Coast Guard. This rule establishes that dockside inspections will be conducted every year and dry dock inspections shall be conducted every 60 months. Also established by this rule are specific maintenance standards for boating equipment and systems as well as specific requirements for safety equipment that must be maintained on board all passenger for hire boats operated on public waters. This rule further establishes requirements for owners of boats used as passenger for hire boats to maintain liability insurance.

In summary, 312 IAC 5 provides the standards for operation of boats on Indiana's public waters. These standards are necessary to provide the safety of all those persons who recreate on Indiana's waterways. This article also provides for the protection of Indiana's natural resources. There is a continued need for these rules.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

The DNR Director's Annual Reports, filed pursuant to IC 4-22-2-28.1(k) for the years 2008 through 2013, provide that the small business regulatory coordinators have not received complaints from the public, including small businesses, concerning these rules.

The complexity of the rule, including any difficulties encountered by:

- (A) the agency in administering the rule; or**
(B) small businesses in complying with the rule.

The Law Enforcement Division has not encountered any difficulties administering this rule and the rule will not create expense to small business.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

There has been no demonstration that these rules significantly overlap with or duplicate other federal, state or local laws.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

In 2008, 312 IAC 5 was readopted under LSA Document #08-57(F). The Economic Impact Statement associated with this 2008 readoption provided the following analyses, in pertinent part:

312 IAC 1 through 312 IAC 4, 312 IAC 5-11, 312 IAC 5-12.5, 312 IAC 5-13 do not impose any fiscal impact on small businesses under IC 4-22-2.5-3.1.

312 IAC 5-5 may have a positive fiscal impact on any small businesses such as marinas equipped with boat sewage pumpout equipment in the fact the marina may charge a fee for this service.

312 IAC 5-6 through 312 IAC 5-10 may have a positive fiscal impact on any small business that might be hired or contract to place, maintain, or remove buoys.

The only impact or costs on a small business created by 312 IAC 5-12 would be on small businesses directly involved with boat operations on an affected waterway. The duration of the impact or cost on the small business would only be for the duration that the unusual or hazardous conditions exist.

Under 312 IAC 5-14 each boat that carries passengers for hire could be considered a small business and this rule does impose requirements on them. It is important to note that all required equipment standards imposed by this rule reflect current industry manufacturer standards. Any recently purchased boat should meet the equipment standards set forth by this rule without alteration. The rule requires the boat be maintained to these standards or in the case of an older boat be brought up to these standards prior to carrying passengers for hire.

Since 2008, there have been five amendments to this article.

LSA Document #08-295(F), amended 312 IAC 5-6-9, established special watercraft zones on Tippecanoe Lake, James Lake, and channels connected to these lakes in Kosciusko County. The amendments were established under IC 14-15-7-3(a)(4) for zones where boating restrictions can be implemented for public safety and under IC 14-15-7-3(a)(6) where boating restrictions can be implemented for fish, wildlife, or botanical resource management. The amendments prohibited boating other than with a trolling motor or paddle on the west side of the Ball Wetlands and established zones on the other sides of the Ball Wetlands where boats

cannot be operated in excess of idle speed. The rule amendment package was found to have no impact on small business.

LSA Document #08-756(F), which amended 312 IAC 5-6-5.6, established a boating protected zone in an area known as the "prairie" in Lake Manitou, Fulton County. The Economic Impact Statement prepared estimated that, except for one possible small business, there would be no impact on small businesses as a result of compliance with this rule. The one exception is that a business opportunity may be created for placing and removing the buoys marking the ecozone.

LSA Document #08-775(F), which amended 312 IAC 5-7-10, established a revised idle zone on Laughery Creek in Dearborn and Ohio counties. The Economic Impact Statement prepared for this rule amendment package found that there was no impact or requirement on small business.

LSA Document #09-210(F), which amended 312 IAC 5-7-6, established a revised idle zone on Deer Creek in Perry County. The Economic Impact Statement prepared for this rule amendment package found that there was no impact or requirement on small business.

LSA Document #13-213(F), which amended 312 IAC 5-6-9, eliminated a portion of the special boating zone, removed the expiration date of the rule, and made other technical corrections. The Economic Impact Statement found that there would be no economic impact on small businesses.

In the process of conducting business, the DNR is continually reviewing its effectiveness in providing standards and guidance to small businesses, private individuals, and professionals in complying with its rules. Technology, economic conditions, and other factors have not changed in a way that would warrant modification to 312 IAC 5.

Review under IC 4-22-2.1-5

MOST RECENT SMALL BUSINESS IMPACT ANALYSIS

LSA Document #14-67

The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared

Proposed is the readoption of 312 IAC 5 in its entirety and without amendment. 312 IAC 5 pertains to the use of any boat on a public water of Indiana.

Since the 2008 readoption of this article (LSA Document #08-57(F)), there have been five amendments under the following: (1) LSA Document #08-295(F), (2) LSA Document #08-756(F), (3) LSA Document #08-775(F), (4) LSA Document #09-210(F), and (5) LSA Document #13-213(F).

The following are the previous economic impact statements prepared for the above referenced rule packages amending 312 IAC 5.

LSA Document #08-295(F)

**Economic Impact Statement
LSA Document #08-295**

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

The Department of Natural Resources (DNR) estimates that no small businesses would be directly affected by the rule amendments. The amendments apply to waters of public freshwater lakes that are managed in support of the public trust established by [IC 14-26-2](#).

Estimated Total Annual Economic Impact on Small Business to Comply:

The DNR estimates there will be no administrative costs to small businesses as a result of compliance with these amendments.

Justification Statement for Requirement or Cost:

The amendments establish protected watercraft zones in Tippecanoe Lake and James Lake, Kosciusko County, for an area known as the Ball Wetlands. The amendments are established under [IC 14-15-7-3\(a\)\(4\)](#) for zones where boating restrictions can be implemented for public safety and under [IC 14-15-7-3\(a\)\(6\)](#) where boating restrictions can be implemented for fish, wildlife, or botanical resource management. The amendments prohibit boating other than with a trolling motor or paddle on the west side of the Ball Wetlands and establish zones on the other sides of the Ball Wetlands where boats cannot be operated in excess of idle speed. The impact high-speed boating can have on emergent vegetation, stirring up bottom sediments, and reintroducing nutrients to the water column has been well documented. The amendments would serve both public safety and aquatic environmental protection. There would be no requirement or cost to a small business.

Regulatory Flexibility Analysis of Alternative Methods:

The DNR does not proposed an alternative regulatory method since the amendments have no impact on small businesses. The DNR did not rely on any studies in its decision not to employ alternatives to the proposed amendments.

LSA Document #08-756(F)

Economic Impact Statement

LSA Document #08-756

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

The Department of Natural Resources (DNR) estimates that, except for one possibility, no small businesses will be directly or indirectly affected by this rule amendment. The one exception is that a small business is likely to be contracted to annually remove and replace the buoys marking the restricted zone. The DNR has the authority to promulgate rules governing special watercraft zones in accordance with [IC 14-15-7-3](#).

Estimated Average Annual Administrative Costs That Small Businesses Will Incur:

The DNR estimates that there will be no administrative costs to small businesses as a result of compliance with these rules.

Estimated Total Annual Economic Impact on Small Businesses:

The DNR estimates that, except for one possible small business, there will be no impact on small businesses as a result of compliance with this rule. The one exception is that a business opportunity may be created for placing and removing the buoys marking the ecozone.

Justification of Requirements of Costs on Small Businesses Where Rule Is Not Expressly Required by Law:

There are no negative economic impacts on small businesses as a result of compliance with this rule.

Supporting Data, Studies, or Analyses:

None.

Regulatory Flexibility Analysis of Alternative Methods:

There are no alternatives proposed by the DNR given that there are no negative impacts on small businesses. The DNR did not rely on any studies in its decision not to employ alternatives to this rule.

LSA Document #08-775(F)

Economic Impact Statement

LSA Document #08-775

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

None

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

None

Estimated Total Annual Economic Impact on Small Businesses to Comply:

None

Justification Statement of Requirement or Cost:

No requirement or cost is imposed on a small business by this rule.

Regulatory Flexibility Analysis of Alternative Methods:

Because the rule does not impose a requirement or cost on small businesses, a flexibility analysis was not performed.

LSA Document #09-210(F)

Economic Impact Statement

LSA Document #09-210

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

None.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

None.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

None.

Justification Statement of Requirement or Cost:

No requirement or cost is imposed on a small business by this rule.

Regulatory Flexibility Analysis of Alternative Methods:

Because the rule does not impose a requirement or cost on small businesses, a flexibility analysis was not performed.

LSA Document #13-213(F)

Economic Impact Statement

LSA Document #13-213

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

No small businesses are subject to or will be impacted by this rule that sets boat speed restrictions in areas surrounding the Ball Wetland and a motor restriction in one portion on the west side of Ball Wetland (east end of Tippecanoe Lake). The Ball Wetland is owned by DNR Division of Nature Preserves so no private residences or small businesses are landward of where these restrictions apply. The most likely small businesses that would be impacted by a rule such as this would be marinas and lake service providers (that is, those who install and service piers, boat lifts, etc.). Since the Ball Wetland is under the ownership of Nature Preserves there are no moored boats, piers, lifts, etc. on the portion of shoreline affected by this rule so marinas and lake service providers will not be affected. One area under the present rule that does encompass a few residential lots is being removed from the rule since it was viewed by these residents as infringing on their property rights.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

Small businesses are not impacted by this rule because there is no service they would be asked to provide within the regulated areas. There is no reporting, record keeping, or other administrative costs associated with this rule.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

There will be no economic impact on small businesses as a result of the rule as small businesses are not impacted by the rule.

Justification Statement of Requirement or Cost:

Not applicable.

Regulatory Flexibility Analysis of Alternative Methods:

Since small businesses are not impacted by this rule alternatives to lessen the impact to small businesses were not considered. The portion of the current rule that restricted speed within an area encompassing private residences is being removed from this rule since it was viewed by these residents as infringing on their property rights.

Previous analyses performed are still accurate and no changes are warranted at this time.

Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)

There were no regulatory alternatives presented in the previous analyses.

Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements

Today's conditions have not changed since the above referenced Economic Impact Analyses were prepared. 312 IAC 5 should be readopted in its entirety without change. There is no alternative regulatory method that can be seen to exist that could minimize the economic impact of the rule on small businesses while still achieving the purpose of the rule, which is public safety and the protection of Indiana's resources.

Executive Order 13-03 required agencies to "suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013." Financial Management Circular 2013-01 restated these requirements and added compliance information. On May 2, 2013, the

Director of the Office of Management and Budget wrote to inform agency heads the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule readoption proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent to Readopt a Rule, to the Office of Management and Budget, the Legislative Council, and the Administrative Rule Oversight Committee on April 24, 2014. In a May 27, 2014 letter the Director of the State Budget Agency recommended the proposed rule readoption be approved.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On March 12, 2014, the “Notice of Intent to Readopt” 312 IAC 5 was posted to the *Indiana Register* at 20140312-IR-312140067RNA as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 5 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately. No request was made.

The Commission may submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The hearing officer recommends the Commission approve for readoption 312 IAC 5, without amendment, for subsequent filing with the Publisher.

Dated: June 12, 2014

Jennifer M. Kane
Hearing Officer